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SERVICE DATE – JULY 17, 2013

SURFACE TRANSPORTATION BOARD

Docket No. EP 431 (Sub-No. 4)

REVIEW OF THE GENERAL PURPOSE COSTING SYSTEM

MOTION FOR PROTECTIVE ORDER

Decided: July 17, 2013

By motion filed June 21, 2013, Union Pacific Railroad Company (UP) seeks a protective order under 49 C.F.R. § 1104.14 to protect the highly confidential and commercially sensitive information contained in UP's comments, which UP submitted under seal in this proceeding. Included with the motion are a proposed protective order and undertakings. UP submits that a protective order is necessary because its comments contain highly confidential, competitively sensitive and proprietary information regarding UP's service to its customers.

Good cause exists to grant the motion for protective order. Issuance of the protective order will ensure that confidential information will be used solely for this proceeding and not for other purposes. Further, the motion conforms to the Board's rules at 49 C.F.R. § 1104.14 governing protective orders to maintain the confidentiality of materials submitted to the Board. Accordingly, the motion for protective order will be granted, and the protective order and undertakings are adopted for this proceeding, as modified in the appendix to this decision.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The motion for a protective order is granted, and the protective order and undertakings in the appendix to this decision are adopted.

2. UP's unredacted comments will be kept under seal by the Board and not placed in the public docket or otherwise disclosed to the public, unless the appropriate attached undertaking is executed and the terms of the protective order are followed, or unless otherwise ordered by the Board.

3. This decision is effective on its service date.

By the Board, Richard Armstrong, Acting Director, Office of Proceedings.

APPENDIX

PROTECTIVE ORDER

1. For purposes of this Protective Order:

(a) “Confidential material” means information or material designated as “CONFIDENTIAL,” and any information or material derived therefrom.

(b) “Highly Confidential material” means information or material designated as “HIGHLY CONFIDENTIAL,” and any information or material derived therefrom.

(c) “Party” means any party to Docket No. EP 431 (Sub-No. 4).

(d) “Proceeding” means (i) the proceeding before the Surface Transportation Board (“the Board”) in Docket No. EP 431 (Sub-No. 4), and (ii) any judicial review proceeding from (i).

2. Any Party producing information or material in discovery to another Party in this Proceeding, or submitting information or material in pleadings or evidence in this Proceeding that the Party believes in good faith reveals confidential information may designate such information or material as “CONFIDENTIAL” in accordance with paragraph 4.

3. Any Party producing information or material in discovery to another Party in this Proceeding, or submitting information or material in pleadings or evidence in this Proceeding that the Party believes in good faith reveals shipper-specific or railroad-specific rate, cost, quantity, routing, or other competitively sensitive or proprietary information may designate such information or material as “HIGHLY CONFIDENTIAL” in accordance with paragraph 4.

4. The designation of information or material as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” shall be made as follows:

(a) For pleadings, by imprinting the word(s) “Confidential” or “Highly Confidential” on the cover page of the pleading.

(b) For documents and other materials, by imprinting the word(s) “Confidential” or “Highly Confidential” on the face of each page of a document so designated or in a similarly conspicuous location for non-document materials.

(c) For depositions, by indicating on the record at the deposition or upon review of the deposition transcript, which portions of the transcript and/or responses should be treated as “Confidential” or “Highly Confidential.”

(d) For electronically stored information, either by imprinting the word(s) “Confidential” or “Highly Confidential” on any disk or storage medium, or on the face of each page of a document so designated.

5. Confidential Material may not be disclosed in any way, directly or indirectly, to any person or entity, except to an employee, counsel, consultant, or agent of a Party to this Proceeding, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or material, has received and read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking in the form set forth in the Undertaking for Confidential Material.

6. Highly Confidential Material may not be disclosed in any way, directly or indirectly, to any employee of a Party to this Proceeding, or to any other person or entity, except to an outside counsel or outside consultant of a Party, who, before receiving access to such information or material, has received and read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking in the form set forth in the Undertaking for Highly Confidential Material.

7. Confidential Material and Highly Confidential Material shall be used solely for the purposes of this Proceeding, and not for any other business, commercial, operational, or competitive purposes.

8. In the event that a Party produces material which should have been designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” and inadvertently fails to designate the material as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” the producing Party may notify the other parties in writing within 10 days of discovery of its inadvertent failure to make the confidentiality designation and promptly furnish properly designated material. A Party that received the material without the confidentiality designation must return the non-designated material or destroy it, as directed by the producing Party, or take such other steps as the parties agree to in writing, and must make all reasonable efforts to recover such material from any non-parties to which it may have been disclosed, and any copies made by such non-parties.

9. In the event that a Party inadvertently produces material that is protected by the attorney-client privilege, work product doctrine, or any other privilege, the producing Party may make a written request within a reasonable time after it discovers the inadvertent disclosure that another Party return the inadvertently produced material. A Party that received the inadvertently produced material must either return the material or destroy it immediately upon receipt of the written request, as directed by the producing Party. By returning or destroying the material, the receiving Party is not conceding that the material is privileged and is not waiving its right to later challenge the substantive privilege claim, provided that it may not challenge the privilege claim by arguing that the inadvertent production waived the privilege.

10. No Party may include Confidential Material or Highly Confidential Material in any pleading, brief, discovery request or response, or other document submitted to the Board, unless

the pleading or other document is submitted under seal, in a package clearly marked on the outside as “Confidential Materials Subject to Protective Order.” See 49 C.F.R. § 1104.14.

11. If any Party intends to use Confidential Material or Highly Confidential Material at a Board hearing or mediation in this Proceeding, or in any judicial review proceeding arising herefrom, the party so intending shall submit any proposed exhibits or other documents setting forth or revealing such Confidential Material or Highly Confidential Material to the Board, the mediator, or the court, as appropriate, with a written request that the Board, the mediator, or the court: (a) restrict attendance at the hearings or mediation sessions during discussion of such Confidential Material or Highly Confidential Material and (b) restrict access to the portion of the record or briefs reflecting discussion of such Confidential Material or Highly Confidential Material in accordance with the terms of this Protective Order.

12. If any Party intends to use Confidential Material or Highly Confidential Material in the course of any deposition in this proceeding, the party so intending shall so advise counsel for the Party producing the materials, counsel for the deponent, and all other counsel attending the deposition, and all portions of the deposition at which any such Confidential Material or Highly Confidential material is used shall be restricted to persons who may review the material under this Protective Order. All portions of deposition transcripts and/or exhibits that consist of or disclose Confidential Material or Highly Confidential Material shall be kept under seal and treated as Confidential Material or Highly Confidential Material in accordance with the terms of this Protective Order.

13. To the extent that material reflecting the terms of contracts, shipper-specific traffic data, other traffic data, or other proprietary information is produced or otherwise disclosed by a Party in this Proceeding and is held and used by the receiving person in compliance with this Protective Order, such production, disclosure, and use of the material and of the data that the material contains shall be deemed essential for the disposition of this and any related proceedings and shall not be deemed a violation of 49 U.S.C. §§ 11323, 11904, or any other relevant provision of the ICC Termination Act of 1995.

14. Except for this proceeding, the parties agree that if a party is required by law or order of a governmental or judicial body to release “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” material produced by the other party or copies or notes thereof as to which it obtained access pursuant to this Protective Order, the party so required shall notify the producing party in writing within three working days of the determination that the “CONFIDENTIAL” material, “HIGHLY CONFIDENTIAL” material, or copies or notes are to be released, or within three working days prior to such release, whichever is soonest, to permit the producing party the opportunity to contest the release.

15. Information that is publicly available or obtained outside of this proceeding from a person with a right to disclose it shall not be subject to this Protective Order even if the same information is produced and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” in this proceeding.

16. A “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” designation may be removed by consent of a party who asserts the confidential, proprietary, or commercially sensitive interest, or absent such consent, by appropriate decision of the Board upon application of a party seeking to remove such designation.

17. Each party has a right to view its own data, information and documentation (i.e., information originally generated or compiled by or for that party or if generated or compiled by another party, the information, data, or documentation disclosed by the producing party in the ordinary course of business to the other party), even if that data, information and documentation has been designated as “HIGHLY CONFIDENTIAL” by a producing party, without securing prior permission from the producing party.

18. If a party or parties (the “filing party or parties”) file and serve upon another party or parties (the “reviewing party or parties”) a pleading or evidence containing the “HIGHLY CONFIDENTIAL” material of the filing party or parties, the filing party or parties shall also contemporaneously provide to outside counsel for the reviewing party or parties a list of the “HIGHLY CONFIDENTIAL” information of the filing party or parties contained in the pleading that must be redacted from the “HIGHLY CONFIDENTIAL” version prior to review by the In-house Personnel of the reviewing party or parties.

19. Any Party that receives Confidential Material or Highly Confidential Material that is not the Party’s own information or material, and any information or material derived therefrom, must be destroyed by the receiving Party, its employees, counsel, and agents at the completion of this Proceeding, except that (1) outside counsel for each Party may retain file copies of all pleadings and evidence filed with the Board; and (2) in-house counsel for each Party may retain file copies of all pleadings and evidence which they were authorized to review under this Protective Order.

20. Any party filing with the Board a “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” pleading in this proceeding must simultaneously file a public version of the pleading.

Exhibit A

UNDERTAKING – CONFIDENTIAL MATERIAL

I, _____ have read the Protective Order served on July 17, 2013, governing the production and use of Confidential Information and Confidential Documents in Docket No. EP 431 (Sub-No. 4), understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in Docket No. EP 431 (Sub-No. 4), any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with Docket No. EP 431 (Sub-No. 4) and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as “CONFIDENTIAL,” other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: _____

Dated: _____

Exhibit B

UNDERTAKING – HIGHLY CONFIDENTIAL MATERIAL

I, _____ am outside [counsel] [consultant] for _____, for whom I am acting in this proceeding. I have read the Protective Order served on July 17, 2013, governing the production and use of Confidential Information and Confidential Documents in Docket No. EP 431 (Sub-No. 4), understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in Docket No. EP 431 (Sub-No. 4), any related proceedings before the Surface Transportation Board, or any judicial review proceedings in connection with Docket No. EP 431 (Sub-No. 4) and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed undertakings in the form hereof.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as “HIGHLY CONFIDENTIAL,” that I will take all necessary steps to assure that said information or documents be kept on a confidential basis by any outside counselor or outside consultants working with me, that under no circumstances will I permit access to said materials or information by employees of my client or its subsidiaries, affiliates, or owners, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting information or documents designated or stamped as “HIGHLY CONFIDENTIAL,” other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this undertaking and that other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: _____
OUTSIDE [COUNSEL] [CONSULTANT]

Dated: _____